

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MITCHELL KEITH GOODRUM,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

3:20-cv-00541-RCJ-CLB

**REPORT AND RECOMMENDATION
OF U.S. MAGISTRATE JUDGE¹**

Before the court is Plaintiff Mitchell Goodrum's ("Goodrum"), application to proceed *in forma pauperis* (ECF No. 3), his *pro se* civil rights complaint (ECF No. 1-1), and two motions for appointment of counsel (ECF No. 1-2, 4). For the reasons stated below, the court recommends that Goodrum's *in forma pauperis* application (ECF No. 3) be granted, his two motions for appointment of counsel (ECF Nos. 1-2, 4) be denied as moot, and that his complaint (ECF No. 1-1) be dismissed without prejudice and without leave to amend.

I. *IN FORMA PAUPERIS* APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable pay such fees or give security therefore. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

The Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial

¹ This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

2 "[T]he supporting affidavit [must] state the facts as to [the] affiant's poverty with some
3 particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir.
4 1981) (quotation marks and citation omitted). A litigant need not "be absolutely destitute to
5 enjoy the benefits of the statute." *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331,
6 339 (1948).

7 A review of the application to proceed IFP reveals Goodrum cannot pay the filing fee;
8 therefore, the court recommends that the application (ECF No. 3) be granted.

9 **II. SCREENING STANDARD**

10 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
11 provides, in relevant part, that "the court shall dismiss the case at any time if the court
12 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a claim
13 upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is
14 immune from such relief." 28 U.S.C. § 1915A(b). A complaint is frivolous when "it lacks an
15 arguable basis in either law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). This
16 includes claims based on legal conclusions that are untenable (e.g., claims against
17 defendants who are immune from suit or claims of infringement of a legal interest which
18 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
19 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
20 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
21 standard applied in the context of a motion to dismiss under Federal Rule of Civil Procedure
22 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which requires dismissal
23 where the complaint fails to "state a claim for relief that is plausible on its face," *Bell Atl.*
24 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

25 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
26 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
27 accept as true all well-pled factual allegations, set aside legal conclusions, and verify that

the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The complaint need not contain detailed factual allegations, but must offer more than “a formulaic recitation of the elements of a cause of action” and “raise a right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). Still, a liberal construction may not be used to supply an essential element of the claim not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v. United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

III. SCREENING OF COMPLAINT

In his complaint, Goodrum sues Defendants State of Nevada, Churchill County District Attorney’s Office, Lane Mills, Jeffery Weed, and Charles Woodman under 42 U.S.C. § 1983. (See ECF No. 1-1.) The complaint relates to Goodrum’s underlying state criminal case and subsequent appeal. (*Id.*) Goodrum alleges that the Defendants, who include the District Attorneys (Mills and Weed) and criminal defense attorney (Woodman) assigned to his case, made a number of errors in his criminal case and appeal. (*Id.*) Goodrum seeks a reversal of his criminal conviction, release from custody, as well as monetary damages in excess of \$3 million. (*Id.* at 15-16.)

42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir. 2000)). The statute “provides a federal cause of action against any person who, acting under color of state law, deprives another of his federal rights[.]” *Conn v. Gabbert*, 526 U.S. 286, 290 (1999), and is “merely . . . the procedural device for enforcing substantive provisions of the Constitution and federal statutes.” *Crompton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

1 Claims under § 1983 require the plaintiff to allege (1) the violation of a federally-protected
2 right by (2) a person or official who acts under the color of state law. *Anderson*, 451 F.3d at
3 1067.

4 However, § 1983 is not a backdoor through which a federal court may overturn a
5 state court conviction or award relief related to the fact or duration of a sentence. Section
6 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts
7 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they different
8 in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir. 2003) (quoting
9 *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take care to prevent
10 prisoners from relying on § 1983 to subvert the differing procedural requirements of *habeas*
11 *corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at 486-87; *Simpson v.*
12 *Thomas*, 528 F.3d 685, 695 (9th Cir. 2008). When a prisoner challenges the legality or
13 duration of his custody, raises a constitutional challenge which could entitle him to an earlier
14 release, or seeks damages for purported deficiencies in his state court criminal case, which
15 effected a conviction or lengthier sentence, his sole federal remedy is a writ of *habeas*
16 *corpus*. *Edwards v. Balisok*, 520 U.S. 641, 648 (1997); *Heck*, 512 U.S. at 481; *Wolf v.*
17 *McDonnell*, 418 U.S. 539, 554 (1974); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Simpson*,
18 528 F.3d at 692-93. Stated differently, where “a judgment in favor of the plaintiff would
19 necessarily imply the invalidity of his conviction or sentence,” then “the complaint must be
20 dismissed unless the plaintiff can demonstrate that the conviction or sentence has already
21 been invalidated.” *Heck*, 512 U.S. at 487.

22 It appears that Goodrum is challenging the constitutionality of his state court criminal
23 conviction. Consequently, he must demonstrate that his conviction has been overturned to
24 proceed in an action under § 1983. As he has not done so, his sole relief is a *habeas corpus*
25 action. The court, therefore, recommends that the complaint be dismissed without prejudice
26 and without leave to amend.

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1 Additionally, the court notes that Defendants Mills and Weed are absolutely immune
 2 from suit under § 1983 in their roles as state prosecutors. *See Imbler v. Pachtman*, 424
 3 U.S. 409, 427, 430 (1976) (state prosecutors are absolutely immune from § 1983 actions
 4 when performing functions “intimately associated with the judicial phase of the criminal
 5 process.”).

6 Finally, in light of this Report and Recommendation, the court also recommends that
 7 Goodrum’s two motions for appointment of counsel (ECF Nos. 1-2, 4) be denied as moot.

8 **IV. CONCLUSION**

9 For the reasons articulated above, the court recommends that Goodrum’s application
 10 to proceed *in forma pauperis* (ECF No. 3) be granted, the two motions for appointment of
 11 counsel (ECF No. 1-2, 4) be denied as moot, and his complaint (ECF No. 1-1) be dismissed
 12 without prejudice and without leave to amend.

13 The parties are advised:

14 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 15 Practice, the parties may file specific written objections to this Report and Recommendation
 16 within fourteen days of receipt. These objections should be entitled “Objections to
 17 Magistrate Judge’s Report and Recommendation” and should be accompanied by points
 18 and authorities for consideration by the District Court.

19 2. This Report and Recommendation is not an appealable order and any notice
 20 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
 21 Court’s judgment.

22 **V. RECOMMENDATION**

23 **IT IS THEREFORE RECOMMENDED** that Goodrum’s application to proceed *in*
 24 *forma pauperis* (ECF No. 3) be **GRANTED**;

25 **IT IS FURTHER RECOMMENDED** that Goodrum’s two motions for appointment of
 26 counsel (ECF Nos. 1-2, 4) be **DENIED as moot**; and,

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1 **IT IS FURTHER RECOMMENDED** that Goodrum's complaint (ECF No. 1-1) be
2 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND.**

3 **DATED:** October 19, 2020.

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UNITED STATES MAGISTRATE JUDGE